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Supreme Court, U.S.
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In The

Supreme Court of the United States

70-241

October Term, 1970 No. 1785

TEXACO, INC.,

Petitioner,

vs.

AUGUSTINE GIZZI and ANTHONY GIACCIO,

Respondents.

REPLY CONTRA PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
Question Presented	1
Statement of the Case	3
Reasons for Denying the Writ	4
Conclusion	5

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Question Presented

The existence of an apparent agency, an agency by estoppel and/or agency is a question of fact to be determined by the tryers of the facts, to wit, the Jury.

Statement of the Case

These are two diversity actions to recover damages for personal injuries sustained in an automobile accident within one hour after the vehicle in question was both serviced and sold by a Texaco service station due to the failure of the operator of said Texaco service station to properly repair and/or install the braking system.

Reasons for Denying the Writ

The questions presented by petitioner, Texaco, Inc., were never presented or argued or raised in the Circuit Court of Appeals. Furthermore, this is an action for personal injuries arising out of breach of warranties and negligence against petitioner, Texaco, Inc., which, through its own conduct of mass media advertising and uniformity of its Texaco service stations, caused members of the general public to believe that they were dealing with the national company, Texaco, Inc., and rely on its supposed good name and reputation. THERE NEVER WAS ANY QUESTION OR ISSUE OF FEDERAL ANTI-TRUST LAW OR CONFLICT OF THE APPLICABLE STATE LAW AS APPLIED BY THE FEDERAL COURT. The questions as presented by petitioner, Texaco, Inc., were so worded and drawn so as to interest the United States Supreme Court in accepting this case for review and are in no way connected with the real issue of this case; to wit, agency, apparent agency, agency by estoppel, negligence and breach of warranty, all of which questions are proper jury questions to be determined by a jury.

The petitioner, Texaco, Inc., quite candidly admits that this Court rarely exercises its discretion to review cases involving personal injuries based on diversity of citizenship actions. But, petitioner claims to have raised significant and far-reaching issues which are of great public interest. It is submitted that the questions presented were manufactured for the sole purpose of interesting this Court to take jurisdiction and review a simple warranty and negligence case based on agency principles.

Conclusion

It is submitted that this Court deny the Petition for Certiorari and assess costs against the Petitioners.

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